

**ASSEMBLY BILL**

**No. 1733**

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**Introduced by Committee on Utilities and Commerce (Reyes  
(Chair), Calderon, Canciamilla, Diaz, Jerome Horton, Levine,  
Nunez, and Ridley-Thomas)**

March 5, 2003

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An act to amend and repeal Section 454.5 of the Public Utilities Code, relating to electricity.

LEGISLATIVE COUNSEL'S DIGEST

AB 1733, as introduced, Committee on Utilities and Commerce. Electricity: procurement plans.

The Public Utilities Act imposes various duties and responsibilities on the Public Utilities Commission with respect to the purchase of electricity and requires the commission to establish a renewables portfolio standard and to review and adopt a procurement plan and a renewable energy procurement plan for each electrical corporation. Existing law requires the commission, until it completes an electric generation procurement methodology that values the environmental and diversity costs and benefits associated with various generation technologies, to direct that a specified portion of electrical generating capacity needed for the future, is reserved or set aside for renewable resources. Existing law requires a proposed procurement plan to show that it is in furtherance of this reserve or set-aside requirement.

This bill would instead require that the proposed procurement plan show that it is in furtherance of the electrical corporation's obligation under the renewables portfolio standard.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

*The people of the State of California do enact as follows:*

SECTION 1. Section 454.5 of the Public Utilities Code, as added by Section 2 of Chapter 835 of the Statutes of 2002, is repealed.

~~454.5.—(a) The commission shall specify the allocation of electricity, including quantity, characteristics, and duration of electricity delivery, that the Department of Water Resources shall provide under its power purchase agreements to the customers of each electrical corporation, which shall be reflected in the electrical corporation's proposed procurement plan. Each electrical corporation shall file a proposed procurement plan with the commission not later than 60 days after the commission specifies the allocation of electricity. The proposed procurement plan shall specify the date that the electrical corporation intends to resume procurement of electricity for its retail customers, consistent with its obligation to serve. After the commission's adoption of a procurement plan, the commission shall allow not less than 90 days before the electrical corporation resumes procurement pursuant to this section.~~

~~(b) An electrical corporation's proposed procurement plan shall include, but not be limited to, all of the following:~~

~~(1) An assessment of the price risk associated with the electrical corporation's portfolio, including any utility-retained generation, existing power purchase and exchange contracts, and proposed contracts or purchases under which an electrical corporation will procure electricity, electricity demand reductions, and electricity-related products and the remaining open position to be served by spot market transactions.~~

~~(2) A definition of each electricity product, electricity-related product, and procurement-related financial product, including support and justification for the product type and amount to be procured under the plan.~~

~~(3) The duration of the plan.~~

~~(4) The duration, timing, and range of quantities of each product to be procured.~~

~~(5) A competitive procurement process under which the electrical corporation may request bids for procurement-related services, including the format and criteria of that procurement process.~~

1 ~~(6) An incentive mechanism, if any incentive mechanism is~~  
2 ~~proposed, including the type of transactions to be covered by that~~  
3 ~~mechanism, their respective procurement benchmarks, and other~~  
4 ~~parameters needed to determine the sharing of risks and benefits.~~

5 ~~(7) The upfront standards and criteria by which the~~  
6 ~~acceptability and eligibility for rate recovery of a proposed~~  
7 ~~procurement transaction will be known by the electrical~~  
8 ~~corporation prior to execution of the transaction. This shall include~~  
9 ~~an expedited approval process for the commission's review of~~  
10 ~~proposed contracts and subsequent approval or rejection thereof.~~  
11 ~~The electrical corporation shall propose alternative procurement~~  
12 ~~choices in the event a contract is rejected.~~

13 ~~(8) Procedures for updating the procurement plan.~~

14 ~~(9) A showing that the procurement plan will achieve the~~  
15 ~~following:~~

16 ~~(A) The electrical corporation will, in order to fulfill its unmet~~  
17 ~~resource needs and in furtherance of Section 701.3, until a 20~~  
18 ~~percent renewable resources portfolio is achieved, procure~~  
19 ~~renewable energy resources with the goal of ensuring that at least~~  
20 ~~an additional 1 percent per year of the electricity sold by the~~  
21 ~~electrical corporation is generated from renewable energy~~  
22 ~~resources, provided sufficient funds are made available pursuant~~  
23 ~~to Section 399.6, to cover the above market costs for new~~  
24 ~~renewable energy resources.~~

25 ~~(B) The electrical corporation will create or maintain a~~  
26 ~~diversified procurement portfolio consisting of both short term~~  
27 ~~and long term electricity and electricity-related and demand~~  
28 ~~reductions products.~~

29 ~~(10) The electrical corporation's risk management policy,~~  
30 ~~strategy, and practices, including specific measures of price~~  
31 ~~stability.~~

32 ~~(11) A plan to achieve appropriate increases in diversity of~~  
33 ~~ownership and diversity of fuel supply of nonutility electrical~~  
34 ~~generation.~~

35 ~~(12) A mechanism for recovery of reasonable administrative~~  
36 ~~costs related to procurement in the generation component of rates.~~

37 ~~(c) The commission shall review and accept, modify, or reject~~  
38 ~~each electrical corporation's procurement plan. The commission's~~  
39 ~~review shall consider each electrical corporation's individual~~  
40 ~~procurement situation, and shall give strong consideration to that~~

1 situation in determining which one or more of the features set forth  
2 in this subdivision shall apply to that electrical corporation. A  
3 procurement plan approved by the commission shall contain one  
4 or more of the following features, provided that the commission  
5 may not approve a feature or mechanism for an electrical  
6 corporation if it finds that the feature or mechanism would impair  
7 the restoration of an electrical corporation's creditworthiness or  
8 would lead to a deterioration of an electrical corporation's  
9 creditworthiness:

10 (1) A competitive procurement process under which the  
11 electrical corporation may request bids for procurement-related  
12 services. The commission shall specify the format of that  
13 procurement process, as well as criteria to ensure that the auction  
14 process is open and adequately subscribed. Any purchases made  
15 in compliance with the commission-authorized process shall be  
16 recovered in the generation component of rates.

17 (2) An incentive mechanism that establishes a procurement  
18 benchmark or benchmarks and authorizes the electrical  
19 corporation to procure from the market, subject to comparing the  
20 electrical corporation's performance to the  
21 commission-authorized benchmark or benchmarks. The incentive  
22 mechanism shall be clear, achievable, and contain quantifiable  
23 objectives and standards. The incentive mechanism shall contain  
24 balanced risk and reward incentives that limit the risk and reward  
25 of an electrical corporation.

26 (3) Upfront achievable standards and criteria by which the  
27 acceptability and eligibility for rate recovery of a proposed  
28 procurement transaction will be known by the electrical  
29 corporation prior to the execution of the bilateral contract for the  
30 transaction. The commission shall provide for expedited review  
31 and either approve or reject the individual contracts submitted by  
32 the electrical corporation to ensure compliance with its  
33 procurement plan. To the extent the commission rejects a proposed  
34 contract pursuant to this criteria, the commission shall designate  
35 alternative procurement choices obtained in the procurement plan  
36 that will be recoverable for ratemaking purposes.

37 (d) A procurement plan approved by the commission shall  
38 accomplish each of the following objectives:

39 (1) Enable the electrical corporation to fulfill its obligation to  
40 serve its customers at just and reasonable rates.

1 ~~(2) Eliminate the need for after-the-fact reasonableness~~  
2 ~~reviews of an electrical corporation's actions in compliance with~~  
3 ~~an approved procurement plan, including resulting electricity~~  
4 ~~procurement contracts, practices, and related expenses. However,~~  
5 ~~the commission may establish a regulatory process to verify and~~  
6 ~~assure that each contract was administered in accordance with the~~  
7 ~~terms of the contract, and contract disputes which may arise are~~  
8 ~~reasonably resolved.~~

9 ~~(3) Ensure timely recovery of prospective procurement costs~~  
10 ~~incurred pursuant to an approved procurement plan. The~~  
11 ~~commission shall establish rates based on forecasts of~~  
12 ~~procurement costs adopted by the commission, actual~~  
13 ~~procurement costs incurred, or combination thereof, as~~  
14 ~~determined by the commission. The commission shall establish~~  
15 ~~power procurement balancing accounts to track the differences~~  
16 ~~between recorded revenues and costs incurred pursuant to an~~  
17 ~~approved procurement plan. The commission shall review the~~  
18 ~~power procurement balancing accounts, not less than~~  
19 ~~semiannually, and shall adjust rates or order refunds, as necessary,~~  
20 ~~to promptly amortize a balancing account, according to a schedule~~  
21 ~~determined by the commission. Until January 1, 2006, the~~  
22 ~~commission shall ensure that any overcollection or~~  
23 ~~undercollection in the power procurement balancing account does~~  
24 ~~not exceed 5 percent of the electrical corporation's actual recorded~~  
25 ~~generation revenues for the prior calendar year excluding revenues~~  
26 ~~collected for the Department of Water Resources. The commission~~  
27 ~~shall determine the schedule for amortizing the overcollection or~~  
28 ~~undercollection in the balancing account to ensure that the 5~~  
29 ~~percent threshold is not exceeded. After January 1, 2006, this~~  
30 ~~adjustment shall occur when deemed appropriate by the~~  
31 ~~commission consistent with the objectives of this section.~~

32 ~~(4) Moderate the price risk associated with serving its retail~~  
33 ~~customers, including the price risk embedded in its long-term~~  
34 ~~supply contracts, by authorizing an electrical corporation to enter~~  
35 ~~into financial and other electricity-related product contracts.~~

36 ~~(5) Provide for just and reasonable rates, with an appropriate~~  
37 ~~balancing of price stability and price level in the electrical~~  
38 ~~corporation's procurement plan.~~

~~(e) The commission shall provide for the periodic review and prospective modification of an electrical corporation's procurement plan.~~

~~(f) The commission may engage an independent consultant or advisory service to evaluate risk management and strategy. The reasonable costs of any consultant or advisory service is a reimbursable expense and eligible for funding pursuant to Section 631.~~

~~(g) The commission shall adopt appropriate procedures to ensure the confidentiality of any market sensitive information submitted in an electrical corporation's proposed procurement plan or resulting from or related to its approved procurement plan, including, but not limited to, proposed or executed power purchase agreements, data request responses, or consultant reports, or any combination, provided that the Office of Ratepayer Advocates and other consumer groups that are nonmarket participants shall be provided access to this information under confidentiality procedures authorized by the commission.~~

~~(h) Nothing in this section alters, modifies, or amends the commission's oversight of affiliate transactions under its rules and decisions or the commission's existing authority to investigate and penalize an electrical corporation's alleged fraudulent activities, or to disallow costs incurred as a result of gross incompetence, fraud, abuse, or similar grounds. Nothing in this section expands, modifies, or limits the State Energy Resources Conservation and Development Commission's existing authority and responsibilities as set forth in Sections 25216, 25216.5, and 25323 of the Public Resources Code.~~

~~(i) An electrical corporation that serves less than 500,000 electric retail customers within the state may file with the commission a request for exemption from this section, which the commission shall grant upon a showing of good cause.~~

~~(j) (1) Prior to its approval pursuant to Section 851 of any divestiture of generation assets owned by an electrical corporation on or after the date of enactment of the act adding this section, the commission shall determine the impact of the proposed divestiture on the electrical corporation's procurement rates and shall approve a divestiture only to the extent it finds, taking into account the effect of the divestiture on procurement rates, that the divestiture is in the public interest and will result in net ratepayer benefits.~~

~~(2) Any electrical corporation's procurement necessitated as a result of the divestiture of generation assets on or after the effective date of the act adding this subdivision shall be subject to the mechanisms and procedures set forth in this section only if its actual cost is less than the recent historical cost of the divested generation assets.~~

~~(3) Notwithstanding paragraph (2), the commission may deem proposed procurement eligible to use the procedures in this section upon its approval of asset divestiture pursuant to Section 851.~~

SEC. 2. Section 454.5 of the Public Utilities Code, as added by Section 3 of Chapter 850 of the Statutes of 2002, is amended to read:

454.5. (a) The commission shall specify the allocation of electricity, including quantity, characteristics, and duration of electricity delivery, that the Department of Water Resources shall provide under its power purchase agreements to the customers of each electrical corporation, which shall be reflected in the electrical corporation's proposed procurement plan. Each electrical corporation shall file a proposed procurement plan with the commission not later than 60 days after the commission specifies the allocation of electricity. The proposed procurement plan shall specify the date that the electrical corporation intends to resume procurement of electricity for its retail customers, consistent with its obligation to serve. After the commission's adoption of a procurement plan, the commission shall allow not less than 60 days before the electrical corporation resumes procurement pursuant to this section.

(b) An electrical corporation's proposed procurement plan shall include, but not be limited to, all of the following:

(1) An assessment of the price risk associated with the electrical corporation's portfolio, including any utility-retained generation, existing power purchase and exchange contracts, and proposed contracts or purchases under which an electrical corporation will procure electricity, electricity demand reductions, and electricity-related products and the remaining open position to be served by spot market transactions.

(2) A definition of each electricity product, electricity-related product, and procurement related financial product, including support and justification for the product type and amount to be procured under the plan.



1 (3) The duration of the plan.

2 (4) The duration, timing, and range of quantities of each  
3 product to be procured.

4 (5) A competitive procurement process under which the  
5 electrical corporation may request bids for procurement-related  
6 services, including the format and criteria of that procurement  
7 process.

8 (6) An incentive mechanism, if any incentive mechanism is  
9 proposed, including the type of transactions to be covered by that  
10 mechanism, their respective procurement benchmarks, and other  
11 parameters needed to determine the sharing of risks and benefits.

12 (7) The upfront standards and criteria by which the  
13 acceptability and eligibility for rate recovery of a proposed  
14 procurement transaction will be known by the electrical  
15 corporation prior to execution of the transaction. This shall include  
16 an expedited approval process for the commission's review of  
17 proposed contracts and subsequent approval or rejection thereof.  
18 The electrical corporation shall propose alternative procurement  
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21 (9) A showing that the procurement plan will achieve the  
22 following:

23 (A) The electrical corporation will, in order to fulfill its unmet  
24 resource needs and in furtherance of Section ~~701.3~~ 399.14, until  
25 a 20 percent renewable resources portfolio is achieved, procure  
26 renewable energy resources with the goal of ensuring that at least  
27 an additional 1 percent per year of the electricity sold by the  
28 electrical corporation is generated from renewable energy  
29 resources, provided sufficient funds are made available pursuant  
30 to Section 399.6, to cover the above-market costs for new  
31 renewable energy resources.

32 (B) The electrical corporation will create or maintain a  
33 diversified procurement portfolio consisting of both short-term  
34 and long-term electricity and electricity-related and demand  
35 reductions products.

36 (10) The electrical corporation's risk management policy,  
37 strategy, and practices, including specific measures of price  
38 stability.



1 (11) A plan to achieve appropriate increases in diversity of  
2 ownership and diversity of fuel supply of nonutility electrical  
3 generation.

4 (12) A mechanism for recovery of reasonable administrative  
5 costs related to procurement in the generation component of rates.

6 (c) The commission shall review and accept, modify, or reject  
7 each electrical corporation's procurement plan. The commission's  
8 review shall consider each electrical corporation's individual  
9 procurement situation, and shall give strong consideration to that  
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16 terms of the contract, and contract disputes which may arise are  
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28 semiannually, and shall adjust rates or order refunds, as necessary,  
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31 commission shall ensure that any overcollection or  
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33 not exceed 5 percent of the electrical corporation's actual recorded  
34 generation revenues for the prior calendar year excluding revenues  
35 collected for the Department of Water Resources. The commission  
36 shall determine the schedule for amortizing the overcollection or  
37 undercollection in the balancing account to ensure that the 5  
38 percent threshold is not exceeded. After January 1, 2006, this  
39 adjustment shall occur when deemed appropriate by the  
40 commission consistent with the objectives of this section.

1 (4) Moderate the price risk associated with serving its retail  
2 customers, including the price risk embedded in its long-term  
3 supply contracts, by authorizing an electrical corporation to enter  
4 into financial and other electricity-related product contracts.

5 (5) Provide for just and reasonable rates, with an appropriate  
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22 combination, provided that the Office of Ratepayer Advocates and  
23 other consumer groups that are nonmarket participants shall be  
24 provided access to this information under confidentiality  
25 procedures authorized by the commission.

26 (h) Nothing in this section alters, modifies, or amends the  
27 commission's oversight of affiliate transactions under its rules and  
28 decisions or the commission's existing authority to investigate and  
29 penalize an electrical corporation's alleged fraudulent activities,  
30 or to disallow costs incurred as a result of gross incompetence,  
31 fraud, abuse, or similar grounds. Nothing in this section expands,  
32 modifies, or limits the State Energy Resources Conservation and  
33 Development Commission's existing authority and  
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35 of the Public Resources Code.

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37 electric retail customers within the state may file with the  
38 commission a request for exemption from this section, which the  
39 commission shall grant upon a showing of good cause.



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(2) Any electrical corporation's procurement necessitated as a result of the divestiture of generation assets on or after the effective date of the act adding this subdivision shall be subject to the mechanisms and procedures set forth in this section only if its actual cost is less than the recent historical cost of the divested generation assets.

(3) Notwithstanding paragraph (2), the commission may deem proposed procurement eligible to use the procedures in this section upon its approval of asset divestiture pursuant to Section 851.